

1982
VDA ORDINANCE

AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE BY LIMITING THE LOCATION OF TRANSIENT VACATION
RENTALS, TIME SHARE UNITS AND TIME SHARE PLANS

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE
OF HAWAII:

SECTION 1. Findings and Purposes. Pursuant to the
authority of Act 186, Session Laws of Hawaii, 1980, the
County Council enacts this ordinance for the purpose of
designating locations, referred to as "Visitor Destination
Areas", in which transient vacation rentals, time share units
and time share plans are to be allowed. These Visitor
Destination Areas include lands in Poipu, Lihue, Wailua-Kapaa
and Princeville and are delineated on Visitor Destination Area
Maps incorporated as part of this ordinance.

In making these Visitor Destination Area designations,
the following factors were considered:

1. The General Plan, Development Plan and Zoning designations for such areas.
2. The suitability of such areas for visitor related uses.
3. The existence in such areas of lands designated for Resort use in the General Plan or having Resort zoning.
4. The availability of public services and facilities in such areas.
5. The potential for conflict with other uses in such areas.
6. The availability in the areas of large numbers of hotel and multiple family dwelling units suitable as accommodations by temporary visitors.
7. The availability in the areas of outdoor or commercial recreational facilities, such as beaches, golf courses, tennis courts, and other similar facilities.

8. The availability in the areas of tourist related commercial facilities, such as gift shops, food stores, recreational equipment and service shops, tour and transportation service terminals, restaurants, bars, night clubs, cabarets, shopping centers, theaters, auditoriums, and other similar facilities.

SECTION 2. That Section 8-1.5 of the Revised Code of Ordinances, relating to Definitions, is hereby amended by inserting the following definitions and by assigning the appropriate numbers thereto:

() "Project; Project Instrument." "Project" means property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations. "Project instrument" means one or more documents, including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project.

() "Time Share Plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty-day period in any year, for any occupant. The term "time share plan" shall include both time share ownership plans and time share use plans, as follows:

(A) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed, or other means whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.

(B) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership

agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

() "Time Share Unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.

* () "Transient Vacation Rentals" means rentals in a multi-unit building for visitors over the course of one or more years, with the duration of occupancy less than thirty days for the transient occupant.

SECTION 3. Chapter 8 of the Revised Code of Ordinances is hereby amended by adding a new Article 17 to read as follows, and by renumbering present Article 17 to Article 18, and by renumbering all subsequent Articles accordingly:

"Article 17. Time Sharing and Transient Vacation Rentals.

Sec. 8-17.1. Limitations on Location. Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited. ✓

Sec. 8-17.2. Permitted Locations. Subject to the limitations contained in Sections 8-17.3 and 8-17.4, time share units, time share plans and transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In Resort Districts and Residential Districts when such districts are located within the visitor destination areas of Poipu, Lihue, Wailua-Kapaa or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached hereto and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes. ✓

Sec. 8-17.3. Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts. If the project in which the time share unit or time share plan is to be created contains an existing time share unit or time share plan, then time share units and plans shall be regulated according to the terms of the project instruments.

If the project in which the time share unit or time share plan is to be created is not a hotel and does not contain time share units or time share plans, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing. Provided, however, that time share units and time share plans permitted under this section shall be limited to the visitor destination areas described in Section 8-17.2, and to hotels in Resort or Commercial Districts.

Sec. 8-17.4. Existing Uses.

(a) Existing Time Share Units, Time Share Plans and Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental, when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after the effective date of this section, nor shall the terms of the

project instrument be amended or modified after the effective date of this section in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

(b) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section 8-17.3.

Sec. 8-17.5. Penalty. An owner of any unit which is operated in violation of this ordinance, together with any other person, firm, company, association, partnership or corporation violating any provision of this ordinance, shall each be fined not less than \$500 nor more than \$10,000 for each offense. If any person fails to remove such violation within one month, such person shall be subject to a new and separate violation for each day the violation continues to exist.

(a) Actions by County Attorney. The County Attorney may file a civil action to enjoin any violation of this ordinance and to collect any penalties provided for by this ordinance.

(b) Disposition of Fines. All fines imposed for violations of this ordinance shall be paid to the Director of Finance to the credit of the Development Fund.

Sec. 8-17.6. Amendments to Visitor Destination Areas Designations. Amendments to the location and/or boundaries of the Visitor Destination Areas shall be made in accordance with the amendment provisions of Article 22 of this Chapter 8, provided

that the burden of proof rests with the applicant to show upon the clear preponderance of the evidence that the amendment is reasonable. The criteria for evaluating such proposed amendments shall be as follows:

1. The proposed amendment is consistent with the General Plan and the Development Plan.
2. The parcel or parcels to be affected by the proposed amendment are suitable for Visitor Destination Area uses.
3. The availability of existing public services and facilities in the affected areas and whether the requested public services and facilities for the proposed change in use can be met without undue burden.
4. The proposed change will conflict with other existing uses in the affected area.
5. The proposed change will cause or result in unreasonable air, noise, or water pollution, or will adversely affect irreplaceable natural resources.
6. The affected areas contain or are in close proximity to other areas that contain:
 - (a) Large numbers of hotel and/or multiple family dwelling units suitable as accommodations by temporary visitors.
 - (b) Lands designated for Resort Use on the General Plan or having Resort zoning.
 - (c) Outdoor or commercial recreational facilities, such as beaches, golf courses, tennis courts and other similar facilities.
 - (d) Tourist related commercial facilities, such as gift shops, food stores, recreational equipment and services shops, tour and transportation service terminals, restaurants, bars, night clubs, cabarets, shopping centers, theaters, auditoriums, and other similar facilities.
7. The proposed change will include or adversely affect predominantly residential neighborhoods."

SECTION 4. Severability. The provisions of this ordinance are separable and the invalidity of any part of this ordinance shall not affect the validity of the remainder of the ordinance.

SECTION 5. This ordinance shall take effect upon its approval.

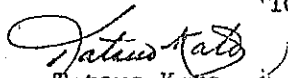
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that hereto attached is a true and correct copy of Bill No. 811 (D-2), As Amended, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on September 7, 1982, by the following vote:

FOR ADOPTION: Asing, Barretto, Fukushima, Sarita,
Yadao, Yotsuda, Harris
AGAINST ADOPTION: None
ABSENT & NOT VOTING: None


TOTAL - 7
TOTAL - 0
TOTAL - 0

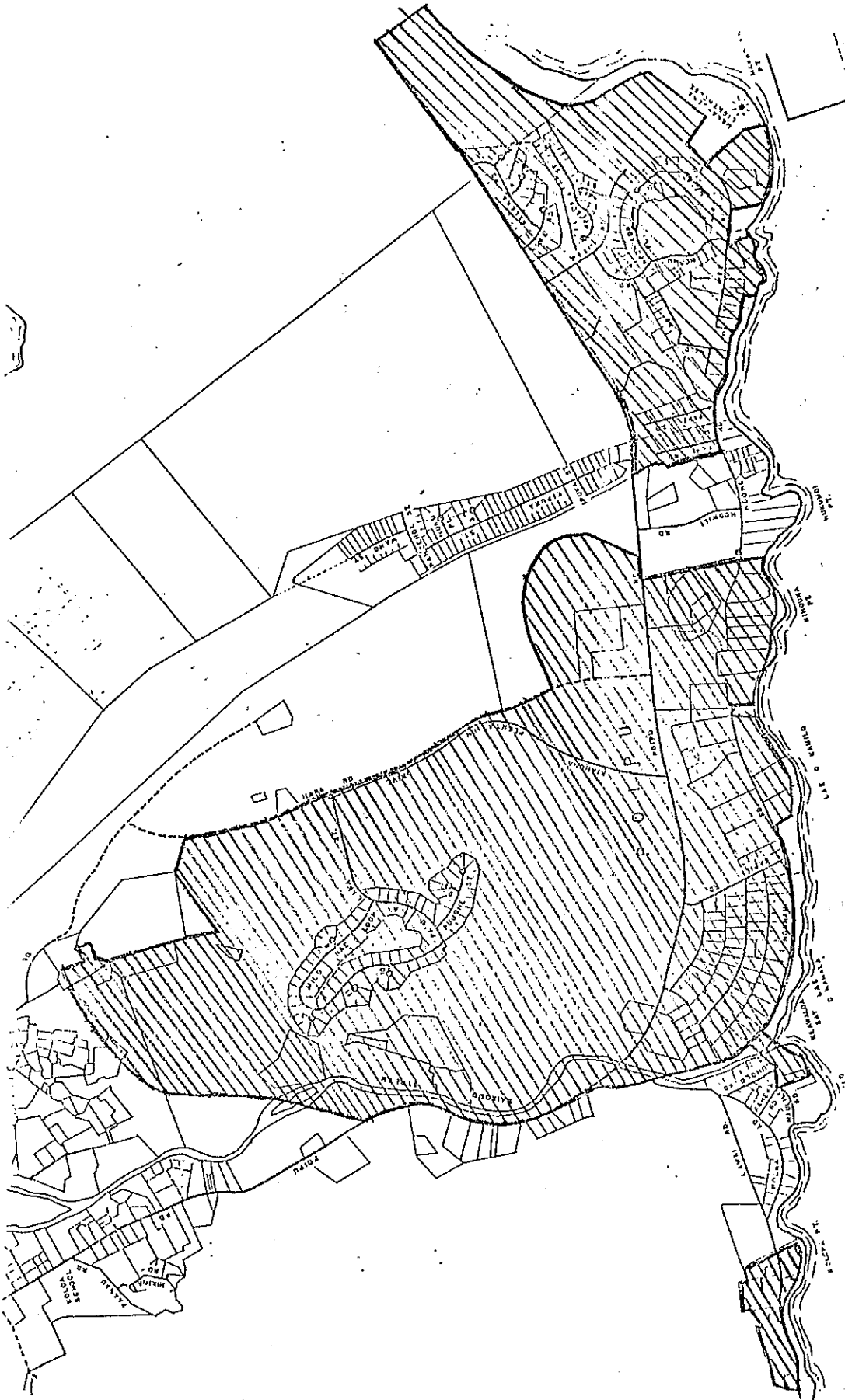
Dated at Lihue, Kauai, Hawaii,
this 8th day of
September, A. D. 1982


Tatsuo Kato
County Clerk
County of Kauai

Date of transmittal to the Mayor:
September 9, 1982

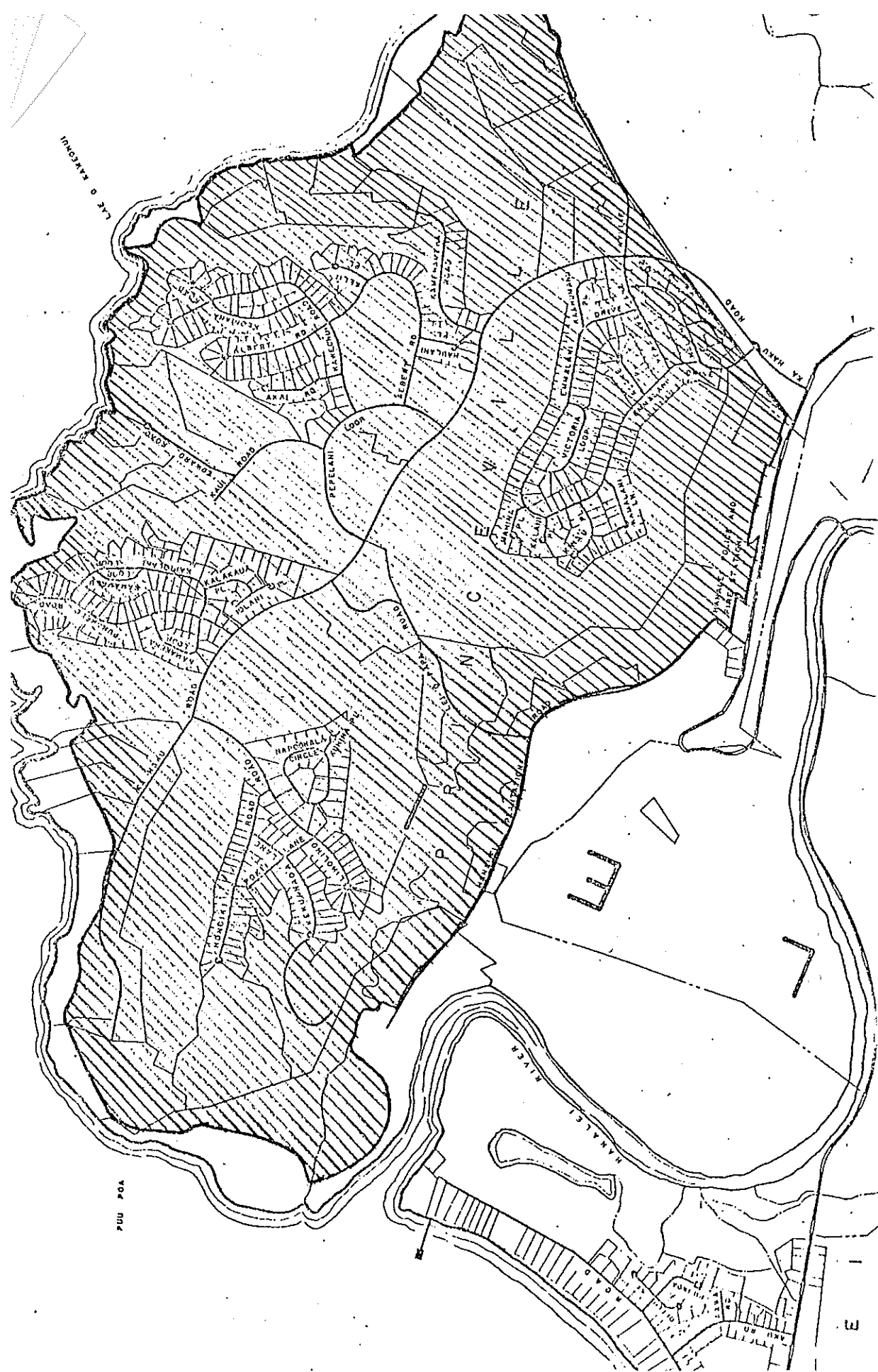
Approved this 22nd day of
September, A. D. 1982


Eduardo E. Malapit
Mayor
County of Kauai



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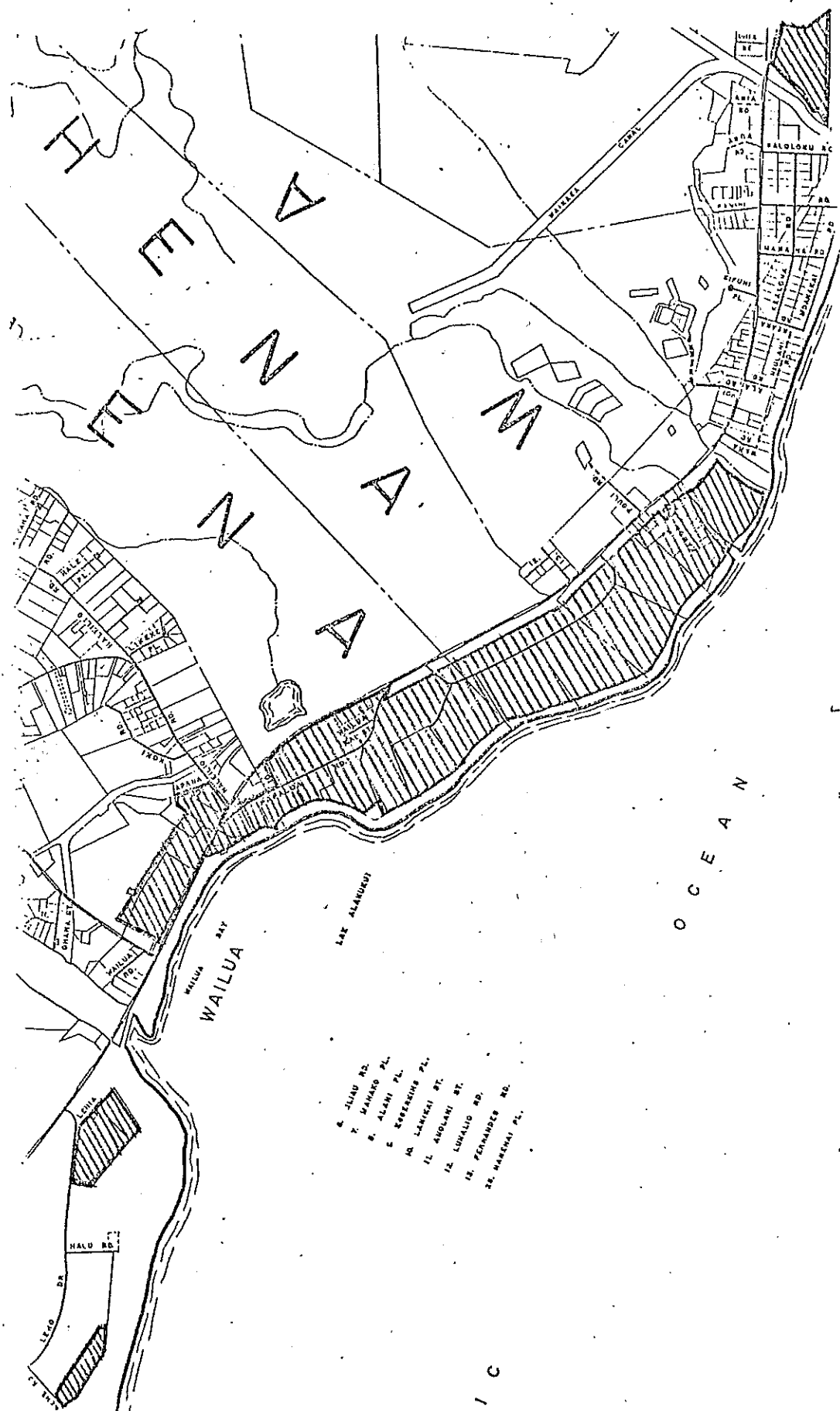
Poipu



Prineville

This is a detailed street map of the Lihue area on Kauai, Hawaii. The map shows a grid of streets including Rice Street, Kahuna Road, and N. Awiliwili Road. Key landmarks such as Lihue High School, Lihue Stadium, and the Lihue Sewer Treatment Plant are marked. The map also shows the coastline, a golf course, and various residential areas. A compass rose is located in the upper right corner.

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